



California Regulatory Notice Register

REGISTER 2005, NO. 20-Z

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MAY 20, 2005

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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available for inspection at the written comment address shown above. Any inquiries should be directed to Ms. Miramontes.

The Panel will prepare a Final Statement of Reasons at the conclusion of the public comment period. This final statement and the information on which it is based will also be available for inspection at the written comment address shown above. Again, any inquiries should be directed to Ms. Miramontes.

This Notice of Proposed Rulemaking is posted on the ETP Website at www.ETP.ca.gov. The Initial Statement of Reasons and the express text of the proposed action are also posted on that site. In addition, when the Final Statement of Reasons is prepared it will be posted on the ETP Website.

GENERAL PUBLIC INTEREST

DEPARTMENT OF HEALTH SERVICES

NOTICE OF GENERAL PUBLIC INTEREST THE DEPARTMENT OF HEALTH SERVICES NURSING FACILITY QUALITY ASSURANCE FEE AND NEW MEDI-CAL REIMBURSEMENT METHODOLOGY FOR FREESTANDING NURSING FACILITIES LEVEL-B AND SUBACUTE CARE UNITS OF FREESTANDING NURSING FACILITIES LEVEL-B

This notice is to provide information of public interest regarding the Department of Health Services' (DHS) implementation of Assembly Bill (AB) 1629 (Stats. 2004, ch. 875). This legislation enacts both a skilled nursing facility Quality Assurance Fee, and a new Medi-Cal Rate Reimbursement Methodology for certain types of nursing facilities.

AB 1629 directs DHS to request federal approval to impose the Skilled Nursing Facility Quality Assurance Fee in accordance with federal law, title 42 United States Code section 1396b(w). Additionally, because AB 1629 exempts certain groups of facilities, DHS is required to request a waiver of uniformity. DHS submitted the request for federal waiver to the Centers for Medicare & Medicaid Services (CMS) on March 21, 2005. This Quality Assurance Fee affects all non-exempt skilled nursing facilities, regardless of whether they participate in the Medi-Cal program. The Quality Assurance Fee will be imposed on a per resident day basis. Facilities failing to comply with requirements of the Quality Assurance Fee may face monetary penalties and/or a delay in license renewal.

Upon federal approval of this waiver, DHS will assess skilled nursing facilities a Quality Assurance

Fee effective retroactive to August 1, 2004. Providers exempted from the Quality Assurance Fee are:

- Continuing Care Retirement Communities
- Multi Level Care Facilities
- Skilled Nursing Facilities owned and operated by the state or another public entity
- Distinct Part of a facility licensed as a general acute care hospital

Legislation may exempt the following providers from the Quality Assurance Fee:

- Institutes of Mental Disease or Special Treatment Programs as defined in California Code of Regulations, title 22, section 72443
- Pediatric Subacute Care Units of a Skilled Nursing Facility

Notice is also given of changes to the Medi-Cal reimbursement methodology mandated by AB 1629 for long-term care freestanding nursing facilities level-B (FS/NF-B) and subacute care units of FS/NF-B's. On February 1, 2005, DHS submitted to the federal CMS a supplement to California's Medicaid State Plan under Title XIX of the Social Security Act. This supplement revises the Medi-Cal (Medicaid) reimbursement methodology for FS/NF-B's and subacute care units of FS/NF-B's. This change in reimbursement methodology will be effective, upon approval by CMS, commencing on August 1, 2005, and will be implemented commencing on the first day of the month following that federal approval.

The classes of Medi-Cal long-term care facilities that are not impacted by this rate reimbursement methodology change are:

- Intermediate Care Facilities (Nursing Facility Level-A)
- Intermediate Care Facilities—Developmentally Disabled
- Intermediate Care Facilities—Developmentally Disabled, Habilitative
- Intermediate Care Facilities—Developmentally Disabled, Nursing
- Skilled Nursing Facilities that are a Distinct Part of a General Acute Care Hospital
- Resident days provided in pediatric subacute care units located in freestanding skilled nursing facilities

PUBLIC REVIEW

The request for federal approval of the Quality Assurance Fee is available in an electronic version at the DHS web site located at:

<http://www.dhs.ca.gov/mcs/mcpd/RDB/LTCSDU/default.htm>

The proposed supplement to California's Medicaid State Plan, which details the proposed Medi-Cal Rate Reimbursement Methodology changes is available at

this same web site, or at local county welfare offices throughout the State. Hard-copy versions of these documents may be requested, and written comments may be sent to:

Ruben Romero, Unit Chief
California Department of Health Services
Medi-Cal Policy Division/Long Term Care
System Development Unit
MS 4612
P.O. Box 997417
Sacramento, CA 95899-7417

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

NOTICE OF PROPOSED SETTLEMENT LODI GROUNDWATER SITE LODI, SAN JOAQUIN COUNTY, CALIFORNIA

**Public Comment Period: May 20 to
June 20, 2005**

The Department of Toxic Substances Control (DTSC) pursuant to the authority vested in DTSC under chapters 6.5 and 6.8, division 20 of the Health and Safety Code, and under its inherent governmental authority to resolve claims within its jurisdiction, proposes to enter into a settlement with the City of Lodi, a municipal corporation (the City), regarding the area of the City located within the County of San Joaquin, California bordered approximately by the Mokelumne River to the north, Beckman Road to the east, Harney Lane to the south, and Mills Avenue to the west and the surrounding commercial and residential area composed of five areas of groundwater contamination that have been referred to as the Central Plume Area, the Northern Plume Area, the Western Plume Area, the Southern Plume Area and the Busy Bee Area from which Hazardous Substances have been, or are threatened to be, released or where Hazardous Substances have or may come to be located (the Site).

Notice is hereby given that DTSC proposes to enter into a Settlement Agreement and Mutual Covenants Not to Sue (Settlement Agreement) with the City of Lodi regarding the Site.

Under the proposed Settlement Agreement, DTSC and the City will resolve disputed claims concerning the Site, and the parties' respective obligations under the Comprehensive Joint Cooperative Agreement (JCA) entered into by DTSC and the City in 1997. If, as a result of a judicially approved settlement of the City's claims against a defendant in the action entitled *City of Lodi v. M&P Investments, et al.*, Case No. CIV-S-00-2441 FCD JFM, United States District Court, Eastern District of California ("City Action"), the City receives any cash settlement payments from

or on behalf of a defendant, then the City shall make certain monetary payments to DTSC as reimbursement for DTSC response costs relating to the Site. The City will also waive any defense it may have arising out of the JCA or the Settlement Agreement to the jurisdiction of the Regional Water Quality Control Board, Central Valley Region or any successor lead agency for the Site.

In return, the parties will covenant not to sue each other each other for claims relating to the Site, subject to certain conditions and reservations. In addition, the Settlement Agreement will recognize that the City is entitled to contribution protection for matters addressed in the Settlement Agreement.

DTSC is holding a 30-day comment period on the Settlement Agreement. Written comments on the proposed Settlement Agreement must be submitted on or before 5:00 p.m. June 20, 2005. DTSC may withhold its consent to the Settlement Agreement if such comments disclose facts or considerations that indicate the proposed Settlement Agreement is inappropriate, improper or inadequate.

Comments should be addressed to:

Steve Koyasako (skoyasak@dtsc.ca.gov)
Department of Toxic Substances Control
Office of Legal Counsel
P.O. Box 806
Sacramento, California 95812-0806

Steve Schwabauer (sschwabauer@lodi.gov)
City Attorney
City of Lodi
P.O. Box 3006
Lodi, CA 95240

Any comments sent electronically should also be sent by mail. Comments should refer to the City of Lodi Groundwater Site.

The Settlement Agreement may be examined at the DTSC headquarters office at 1001 I Street, Sacramento, California 95812-0806. Please contact Ms. Mary Anderson at (916) 324-1667 (phone) or (916) 323-5542 (fax) for an appointment.

During the public comment period, the Settlement Agreement may also be examined on the DTSC Internet Web site at:

[http://www.dtsc.ca.gov/SiteCleanup/
Lodi_Central_Plume/index.html](http://www.dtsc.ca.gov/SiteCleanup/Lodi_Central_Plume/index.html)

A copy of the Settlement Agreement may also be obtained by mail from the DTSC Office of Legal Counsel at P.O. Box 806, Sacramento, California 95812-0806, or by faxing or e-mailing a request to Steve Koyasako (skoyasak@dtsc.ca.gov), fax no. (916) 323-5542, phone confirmation number (916) 322-6996. If requesting a copy from DTSC, the